

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACK STEIN,

Petitioner,

V.

JAMES SPAULDING,

Respondent.

Case No. C04-5499FDB

ORDER ADOPTING REPORT AND RECOMMENDATION

This is a habeas corpus action pursuant to 28 U.S.C. § 2254. The Magistrate Judge recommends that it be dismissed because it is presently on direct appeal and Petitioner has not exhausted any issue. Petitioner has filed objections as well as a letter to the undersigned. Petitioner contends, among other things, that the Magistrate Judge is confused about the claims and issues presented in this petition and that he may use a habeas petition to seek relief from prosecutions or custody in violation of constitutional protections. Petitioner's contentions are not convincing.

The Court having reviewed the Report and Recommendation of the Hon. Karen L. Strombom, United States Magistrate Judge, objections to the Report and Recommendation, and the remaining record, does hereby find and Order:

- (1) The court adopts the Report and Recommendation;
- (2) Petitioner attempts to overturn his 2004 conviction by arguing the re-trial should not have taken place is unexhausted. Petitioner will have to raise this issue again in state court. The fact that the issues raised may have been presented in prior proceedings is irrelevant. The petition is **DISMISSED WITHOUT PREJUDICE** as unexhausted..

1 (3) The clerk is directed to send copies of this Order to Petitioner, and to the Hon. Karen
2 L. Strombom.

3 DATED this 6th day of June 2005.

4 
5 FRANKLIN D. BURGESS
6 UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28